

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Frank R. Truatt)	File Number EB-05-NY-245
)	
Licensee of Station WTBQ)	NAL/Acct. No. 200632380007
Warwick, New York)	
Facility ID #22292)	FRN 0003 7763 90

FORFEITURE ORDER**Adopted:** March 2, 2007**Released:** March 8, 2007

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of nine thousand six hundred dollars (\$9,600) to Frank R. Truatt ("Truatt"), the licensee of AM station WTBQ in Warwick, New York, for willfully and repeatedly violating Sections 11.35(a), 73.1590(a)(6), and 73.3526(e)(12) of the Commission's Rules ("Rules")¹ by failing to maintain fully operational Emergency Alert System ("EAS") equipment, failing to conduct the annual transmitter equipment performance measurements, and failing to maintain a radio issues/programs list in the station's public inspection file.

II. BACKGROUND

2. On September 15, 2005, an agent from the Commission's New York Office conducted an inspection with Truatt at WTBQ's main studio located at 62 North Main Street, Florida, NY 10921. Based on violations found by the agent during the inspection and additional information provided by Truatt in response to a Letter of Inquiry ("LOI"), the New York Office issued a Notice of Apparent Liability for Forfeiture in the amount of \$14,000 to Truatt on July 19, 2006, for apparent willful and repeated violation of Sections 11.35(a), 73.1590(a)(6), and 73.3526(e)(12) of the Rules for failure to maintain fully operational EAS equipment, failure to conduct the annual transmitter equipment performance measurements, and failure to maintain a radio issues/programs list in the station's public inspection file.²

¹ 47 C.F.R. §§ 11.35(a), 73.1590(a)(6), and 73.3526(e)(12).

² *Frank R. Truatt*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200632380007 (Enf. Bur., New York Office, July 19, 2006) ("*NAL*").

3. Truatt submitted a response to the *NAL* on August 17, 2006.³ Truatt does not dispute the findings in the *NAL*, but claims a cancellation or reduction is warranted because: (1) the EAS equipment was partially repaired prior to the FCC's inspection; (2) Truatt is unable to pay the forfeiture without undue financial hardship; (3) Truatt has a history of compliance with the FCC's Rules; and (4) Truatt has taken steps to ensure that the violations do not occur again.

4. With regard to the EAS violation, Truatt claims that the forfeiture should be reduced because he partially resolved the EAS equipment problem several days prior to the agent's inspection. In the *NAL*, we found that WTBQ's EAS equipment had received only nine EAS tests from its LP-1 source and had received no tests from its LP-2 source between August 24, 2003, and September 15, 2005. As Truatt explained in response to a Letter of Inquiry ("LOI") from the New York Office, the tests were not received because of a malfunction in WTBQ's EAS equipment, which occurred around September 2003. Truatt also indicated in his response to the LOI that the problem with the receipt of tests from its LP-1 source was resolved on September 12, 2005, just three days before the FCC agent's inspection. Truatt also reported that the station had changed its LP-2 source on September 16 and that it was receiving tests from its LP-2 source. The logs submitted by Truatt in response to the LOI confirmed that tests were being received from the LP-1 source, but also showed that during the seventeen weeks following the September 15, 2005 inspection, WTBQ had received a total of only four weekly and one monthly EAS test from its new LP-2 source. In his response to the *NAL*, Truatt reports that WTBQ's EAS equipment is fully operational and that the partial repairs he made to the equipment prior to the agent's inspection warrant a reduction in the forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

6. We agree with Truatt that the partial repairs made to the EAS equipment prior to the agent's inspection warrant a reduction in the proposed forfeiture. As the Commission has stated, however, the amount of a reduction based on good faith depends on the circumstances of the particular case.⁸ Here, in determining the amount of the reduction, we take into account that the repairs made prior to the agent's inspection did not, as Truatt concedes, fully resolve the problems with the EAS equipment. In addition, by Truatt's own admission, the EAS equipment was defective for more than two years. We conclude that

³ *Frank R. Truatt*, Request for Remission and Mitigation of Forfeiture (Filed August 17, 2006).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ *See A-O Broadcasting Corporation*, 2003 WL 23018131 (2003) (subsequent citations omitted) para. 25.

a reduction in the amount of \$1,600 is appropriate.⁹ We also agree that a reduction is warranted in light of Truatt's history of compliance with the Commission's Rules. Accordingly, we will further reduce the proposed forfeiture by an additional \$2,800, which brings the total forfeiture amount to \$9,600.¹⁰

7. We decline, however, to reduce the proposed forfeiture based on Truatt's claim that he has taken steps to ensure that the violations do not occur again. The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹¹ We also decline to reduce the proposed forfeiture based on Truatt's claim that payment of the forfeiture will cause an undue financial hardship. The Commission has determined that, in general, an individual's or entity's gross revenues are the best indicator of an ability to pay a forfeiture.¹² We have reviewed the federal tax returns submitted by Truatt and find that the forfeiture, as reduced, represents a percentage of gross income that falls within the range that has been found acceptable.¹³

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁴ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁵ Frank R. Truatt **IS**

⁹ The twenty percent reduction applied here is consistent with the reductions applied in *A-O Broadcasting Corporation* and *Radio One Licenses, Inc.*, both of which Truatt relies upon in his response to the *NAL* to support a reduction based on his remedial efforts. See *A-O Broadcasting Corporation*, 2003 WL 23018131 (rel. Dec. 29, 2003); *recon. denied*, 20 FCC Rcd 756 (2005) (reducing forfeiture by twenty percent for obtaining, but not installing EAS equipment prior to FCC inspection) and *Radio One, Inc.*, 18 FCC Rcd 15964 (Enf. Bur. 2003), *recon. denied*, 18 FCC Rcd 25481 (reducing forfeiture by twenty percent for ordering new EAS equipment prior to FCC inspection).

¹⁰ See, e.g., *KGB, Inc.*, 13 FCC Rcd 16396, 16398 ¶ 8 (1998) (reducing the proposed forfeiture from \$11,500 to \$9,200 for airing indecent material due to the broadcast licensee's "history of overall compliance prior to these broadcasts, and its apparent lack of violations in the period since these broadcasts"); *Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21379 ¶ 14 (Enf. Bur. 2003) (reducing the proposed forfeiture from \$11,000 to \$8,800 for antenna structure lighting and registration violations due to the licensee's history of overall compliance); *South Central Communications Corp.*, 18 FCC Rcd 700, 702 ¶ 9 (Enf. Bur. 2003) (reducing the proposed forfeiture from \$10,000 to \$8,000 for antenna structure lighting violations due to the licensee's history of overall compliance).

¹¹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹² In support of his request for a reduction based on an inability to pay, Truatt initially submitted his personal income tax returns. In his response to the *NAL*, however, Truatt reported that, for tax purposes, the radio station's operation are under FST Corp., T/A WTBC ("FST"). FCC staff requested tax returns for FST and both sets of tax returns were reviewed for purposes of determining whether a reduction is warranted.

¹³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 15 FCC Rcd 24385, 24389 ¶ 11 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 ¶ 6 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross income).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

LIABLE FOR A MONETARY FORFEITURE in the amount of nine thousand six hundred dollars (\$9,600) for willful and repeated violation of Sections 11.35(a), 73.1590(a)(6), and 73.3526(e)(12) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the period specified, that case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁷

10. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Frank R. Truatt at his address of record and to counsel for Frank R. Truatt at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region
Enforcement Bureau

¹⁶ 47 U. S. C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.